

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5299 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PIPALIA BHARAT MAGANLAL

Versus

JILLA PRATHMIK

SHIKSHANADHIKARI

Appearance:

MR RR TRIVEDI for Petitioner

MR HS MUNSHAW for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 06/04/2000

ORAL JUDGEMENT :

This petition raised a short question for consideration, namely respondents issued advertisement on 30.4.1999 for recruitment of Vidya Sahayak. Said advertisement is at Annexure 'A'. The petitioner sent an application for the said post of Vidya Sahayak by

Registered Post AD which came to be received by respondent authorities on 10.5.1999. An affidavit is filed by Shri Nayan C. Shukla, District Primary Education Officer, Bhuj, who has in categorical terms stated in para 4 that:

"It is submitted that the applicants were required to submit their application on or before 9th May 1999 as it was categorically mentioned in the said advertisement that within the period of 10 days of the publication of the said advertisement, the applications of the applicants would be accepted. Respondent no.1 submits that in view of this clear advertisement, the last date for acceptance of such applications was 9th May 1999. It is stated that the respondent no.1 received in all 3520 applications on or before 9th May 1999 while the respondent no.1 received in all 710 applications on or after 10th May 1999. It is submitted that the petitioner's application was received on 10th May 1999 and it is so noted in the Inward register of the office of the respondent no.1 and on the application form of the petitioner also the date stamp was affixed showing the date of the receipt of the application." [Emphasis supplied]

2. Mr.Trivedi for the petitioner relies upon the judgement of this Court in the case of Rajibhai T. Choitani v. State of Gujarat and others, 1989 (1) GLR 309. It is held in the said case that;

"Section 9 of the General Clauses Act speaks about the commencement and termination of time. It inter alia provides that it shall be sufficient for the purpose of excluding first in a series of days or any other period of time to use the word 'from' and for the purpose of including that last in a series of days or any other period of time to use the word 'to'. It is therefore, clear that sec.9 of the General Clauses Act statutorily recognises the well established principle applicable to construction of statutes that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day. Hence apart from sec.9 of General Clauses Act, the above principle will apply. So, when the period of seven days is prescribed it is to be counted from the date of approval of the order by the State Government and therefore, the date on which approval is accorded

to the order is to be excluded, i.e. period of seven days to be counted from 11th June 1988 and 17th June 1988 should be the 7th day. Therefore, the report of the State Government has reached the Central Government within seven days and therefore, the provisions of sec.3(4) of the Act are complied with."

3. Taking the same into consideration and in the facts and circumstances of the case, the day on which advertisement is published is to be excluded and the 10th day may be taken into consideration. The last day by which the application should have been received by the authorities was 10.5.1999. It is equally important to note that on 9.5.1999 was Sunday. That is an additional point in favour of the petitioner that the application which could not reach the authorities on 9.5.1999 and which reached the authorities on 10.5.1999 should have been accepted and should not have been rejected. In the facts and circumstances of the case and without going into other contentions of either parties, this petition is required to be allowed on this short point only.

4. The respondents are directed to consider the case of the petitioner as if his application has reached the authorities within time and the authority shall pass necessary consequential orders by taking into consideration his application. The authorities shall carry out this exercise within four weeks from the date of service of this order. With these directions the petition is allowed. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(Ravi R. Tripathi, J.)

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